

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KATHERINE B. MAYNARD,)	NO. 06-05488
)	
Plaintiff,)	DEFENDANT'S MOTION FOR
)	SUMMARY JUDGMENT OF
v.)	DISMISSAL
)	
PREMIERE CREDIT OF NORTH AMERICA)	NOTE FOR CONSIDERATION:
LLC,)	APRIL 6, 2007
)	
Defendant.)	
)	

I. Relief Requested.

Defendant moves for Summary Judgment on Plaintiff's claims for relief under the Fair Debt Collection Practices Act, 15 U.S.C. Section 1601 et seq. ("FDCPA").

Specifically as to the following paragraphs in the Complaint -- 2, 4, 8-11, 13-20, and 24-26 -- Premiere asks for a summary judgment dismissing Plaintiff's FDCPA claims because no material facts are disputed and Premiere is entitled to judgment as a matter of law. Put another way, since Premiere did nothing wrong, the *true* facts fail to state a dispute upon which FDCPA relief may be granted. FRCP 12(b)(6).

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

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1 **II. Statement of Facts.**

2 Premiere Credit of North America, LLC ("Premiere") is the Defendant in this action.
 3 At all times pertinent, Premiere was the collection agency for the California Student Aid
 4 Commission ("CSAC"). The Defendant Ms. Maynard is a defaulted student loan borrower.

5 Maynard owes more than \$52,274.64 on her defaulted student loan. Affidavit of Todd
 6 J. Wolfe in Support of Defendant's Motion for Summary Judgment ("Wolfe Aff.") at page 3,
 7 line 6. Maynard filed this lawsuit in August 2006 after Premiere, on behalf of the California
 8 Student Aid Commission, garnished her wages. The complaint alleges FDCPA and state law
 9 violations.

10 **In general:** The debt at issue was a student loan governed by Title V or Title IV of
 11 the Higher Education Act ("HEA"), 20 USC Section 1070 et seq., which authorizes the
 12 Secretary of Education to administer student loan and grant programs in order to allow
 13 students to obtain federal guaranteed education loans. Wolfe Aff. at page 2, line 3. Under this
 14 program, a student receives a loan from a participating lender, usually a bank, to pay
 15 postsecondary education expenses. Id. at line 7. Repayment of the loan is guaranteed by a
 16 guaranty agency such as the California Student Aid Commission; Id.; 20 USC Sec. 1078(b),
 17 (c). When a student defaults on a student loan, the guaranty agency pays the outstanding loan
 18 balance to the private lender and takes title to the loan. Wolfe Aff. At page 2, line 8.

19 After an individual defaults on a loan, the Higher Education Act of 1965, as amended
 20 in 1991 by 20 USC 1095a, provided at all times pertinent hereto that a federal guaranty
 21 agency could garnish a student loan debtor's disposable wages up to ten percent.¹ The Act
 22 and accompanying federal regulations promulgated by the Secretary of Education create an
 23 administrative garnishment procedure, alleviating the requirement on guarantors such as the
 24 CSAC to file a lawsuit, obtain a judgment, and then pursue collection by way of judicial
 25 garnishment. Wolfe Aff. at page 2, line 17. Rather, the HEA permits guarantors, such as the

26 ¹ The rate is now 15 percent. 20 U.S.C. Sec. 1095a(a)(1).

27 DEFENDANT'S MOTION FOR
 28 SUMMARY JUDGMENT

1 CSAC, to administratively garnish a debtor's wages without going to court. Id.; 20 USC Sec.
 2 1095a. To ensure compliance with the HEA and the corresponding regulations, the DOE and
 3 CSAC have drafted form notices for guarantors to use in initiating garnishment proceedings
 4 and use of these forms is mandatory. Id.; 34 CFR 682.401(d)(3).

5 **Maynard:** The California Student Aid Commission is a federal guaranty agency
 6 as defined under the Act. Wolfe Aff. at page 2, line 21. In 1988, Maynard incurred a debt
 7 under a federally-insured student loan program and the California Student Aid Commission
 8 guaranteed the loan. At all times pertinent to this litigation, Maynard was in default in
 9 payments under that loan. CSAC paid the balance and took title to the loan. Id. at line 23.

10 In an effort to collect from Maynard, CSAC retained Premiere which attempted to
 11 reach Maynard by telephone and verified her employment. Id. at page 3, line 1. On
 12 November 15, 2005, Premiere mailed a "Notice Prior to Wage Withholding" to Ms. Maynard
 13 at her last known address and on December 21, 2005, served an administrative garnishment
 14 on Maynard's employer to collect the unpaid balance of \$52,274.64 due as of November 15,
 2005 on her defaulted student loan. Id. at line 6.

15 No one from Premiere improperly or unlawfully disclosed Maynard's debt to her co-
 16 workers. Id. at line 7. Premiere contacted Maynard's office only reach her directly or to
 17 verify information necessary to serve the administrative wage garnishment. Id. at line 8.
 18 Premiere now files this Motion for Summary Judgment, because under the undisputed facts,
 it has done nothing to violate federal law.

19 The website of the California State Bar Association reports that Katherine Barrington
 20 Maynard was not eligible to practice law from August 12, 1996 until June 20, 1997 for
 21 failing to pay Bar membership fees. Declaration of Stephen A. Bernheim in Support of
 22 Defendant's Motion for Summary Judgment, Exhibit A.

23 **III. Statement of Issues.**

24 Whether summary judgment of dismissal should be granted when there is no
 25 admissible evidence of Premiere's wrongdoing? Premiere submits the answer is, "yes."

26 DEFENDANT'S MOTION FOR
 SUMMARY JUDGMENT

1 **IV. Evidence Relied Upon.**

2 The following evidence is submitted in support of Defendant's Motion for Summary
3 Judgment:

- 4 • Affidavit of Todd J. Wolfe in Support of Defendant's Motion for
5 Summary Judgment
- 6 • Declaration of Stephen A. Bernheim
- 7 • Records and files herein

8 **V. No Evidence in the Record Supports any Material Allegations of Wrongdoing.**

9 Plaintiff makes ten allegations in the complaint that purport to support a cause of
10 action against Premiere for debt collection violations. The only competent and admissible
11 evidence in the record disproves or shows no support for the elements of her cause of action.
12 Even though Maynard accuses Premiere of improperly disclosing information to "Plaintiff's
13 co-workers and employer," of sending improper faxes, of "contacting [plaintiff's] friends
14 and/or [sic] relatives," of making statements to "multiple third parties," and of leaving
15 messages more than once a day on her answering machine, she names no names, describes
16 no documents, and has no messages.

17 Sworn testimony submitted from Premiere's Todd Wolfe rebuts Maynard's
18 allegations. Therefore, her FDCPA claims should be dismissed.

19 Standard of Review. Summary judgment is appropriate when "there is no genuine
20 issue as to any material fact," *see* Fed.R.Civ.P. 56(c), and only if "the evidence ... is so one-
21 sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477
22 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

23 A. Premiere did not disclose the alleged debt or improper information to
24 Maynard's co-workers or employer.

25 In paragraph 9 of the complaint, Maynard says Premiere "disclosed the alleged debt
26 and further improper information to Plaintiff's co-workers and employer." Under Section
27 805(b) of the FDCPA, 15 USC Section 1692c(b), a debt collector typically may not

28 DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

1 communicate in connection with the collection of any debt with any person except that
 2 communication is permitted “for the purpose of acquiring location information about the
 3 consumer,” as permitted under Section 804, 15 USC Section 1692b.

4 No one from Premiere disclosed the alleged debt to Plaintiff’s co-workers. Wolff Aff.
 5 at page 3, line 12. As shown by the account notes, Premiere made no contacts with
 6 Maynard’s co-workers. Wolfe Aff., Exhibit A. There is no evidence from any of Maynard’s
 7 co-workers that Premiere contacted them, nor does Maynard identify any co-worker to whom
 8 Premiere disclosed the debt. Maynard has not identified any such parties in any Initial
 Disclosure required under court rules and this Court’s scheduling order.

9 Premiere contacted Maynard’s office only to reach her directly or to verify
 10 information necessary to serve the administrative wage garnishment. Wolfe Aff., page 3, line
 11 16. There is no evidence in the record creating any material fact that Premiere communicated
 12 with anyone except as authorized by Section 804.

13 Because there is no competent evidence in the record that Premiere improperly
 14 contacted third parties, the Court should grant Premiere’s motion for summary judgment as
 to this count.

15 B. Premiere never pretended to be calling from the California State Bar.

16 In paragraph 10 of the complaint, Maynard says Premiere “pretended to be calling
 17 from the California State Bar Association by leaving a message for Plaintiff with Plaintiff’s
 18 co-worker that the Bar would be suspending her license to practice law within nine days.”

19 Under Section 807(10) of the FDCPA, 15 USC Sec. 1692e(10), a debt collector may
 20 not use “false representation or deceptive means” to collect any debt. Here, despite
 21 Maynard’s allegations, the undisputed evidence at this point shows that Premiere never
 22 pretended to be calling from the California State Bar Association and made no statement or
 23 threat regarding Ms. Maynard’s California State Bar Association membership to anyone or
 24 toward Ms. Maynard. Wolfe Aff. at pages 3-4. Premiere has no idea how Ms. Maynard
 became aware of such claims, and denies them entirely. Id.

25 DEFENDANT’S MOTION FOR
 26 SUMMARY JUDGMENT

1 The website of the California State Bar Association reports that Katherine Barrington
 2 Maynard was not eligible to practice law from August 12, 1996 until June 20, 1997 for
 3 failing to pay Bar membership fees. Declaration of Stephen A. Bernheim in Support of
 4 Defendant's Motion for Summary Judgment, Exhibit A. It may have been that the California
 5 State Bar was calling again; it was not Premiere.

6 Because there is no competent evidence in the record that Premiere pretended to be
 7 calling from the California State Bar or left any message with any of Maynard's co-workers
 8 that the Bar would suspend her law license, the Court should grant Premiere's motion for
 9 summary judgment as to this count.

10 C. Premiere never mislabeled itself "Premiere Creditors".

11 In paragraph 13 of the complaint, Maynard says Premiere "sent fax communications
 12 to Plaintiff's employer clearly labeling itself as "Premiere Creditors."

13 Under Section 807(14) of the FDCPA, 15 USC Sec. 1692e(14), a debt collector may
 14 not use "any business . . . name other than the true name of the debt collector's business" in
 15 the course of collecting any debt. Here, despite Maynard's allegations, there is no evidence
 16 that Premiere ever used any name other than its true name in connection with collection of
 17 Maynard's debt.

18 Premiere has no idea what Maynard is referring to. Maynard's statement is simply not
 19 true. Wolfe Aff. at page 4, line 6. Maynard has not identified any such documents in her
 20 initial disclosures. Because there is no competent evidence in the record that Premiere ever
 21 improperly labeled itself "Premiere Creditors," the Court should grant Premiere's motion for
 22 summary judgment as to this count.

23 D. Premiere never made any threats of action it could not or did not intend to
 24 take.

25 In paragraph 14 of the complaint, Maynard says Premiere "made threats of actions
 26 that it could not, or alternatively did not, intend to take." The only threat of action that

27 DEFENDANT'S MOTION FOR
 28 SUMMARY JUDGMENT

Premiere made was to threaten to undertake an administrative wage garnishment, an act Premiere could and did undertake. Wolfe Aff. at page 4, line 8.

Under Section 807(5) of the FDCPA, 15 USC Sec. 1692e(5), making a “threat to take any action that cannot legally be taken or that is not intended to be taken” is a false and deceptive representation and hence, a violation of the FDCPA. In this case, however, Maynard does not say what action Premiere threatened to take. There is no evidence in the record of any threat of any action that could not be taken or was not intended to be taken.

Premiere has no idea what Maynard is referring to. Maynard’s statement is simply not true. Because there is no competent evidence in the record that Premiere ever made any threats, nor are there any allegations in the complaint as to what the threats were, the Court should grant Premiere’s motion for summary judgment as to this count.

E. Premiere never “discussed issues” with “friends and/or relatives”.

In paragraph 15 of the complaint, Maynard says Premiere “contacted friends and/or relatives of Plaintiff and discussed issues other than the location or contact information of the Plaintiff.”

Under Section 805(b) of the FDCPA, 15 USC Section 1692c(b), a debt collector typically may not communicate in connection with the collection of any debt with any person except that communication is permitted “for the purpose of acquiring location information about the consumer,” as permitted under Section 804, 15 USC Section 1692b.

No one from Premiere contacted Maynard’s friends or relatives to discuss issues other than Maynard’s location or contact information. Wolfe Aff. at page 4, line 18. As shown by the account notes, Premiere made no contact at all with Maynard’s friends or relatives. Id. at Exhibit A. There is no evidence in the record from any of Maynard’s friends or relatives that Premiere contacted any of them, nor does Maynard identify in her initial disclosures any friend or relative Premiere contacted. The record presently shows that Premiere never contacted any of Maynard’s friends or relatives, by telephone or otherwise. Id. at page 4, line

DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

21. There is no evidence in the record creating any material fact that Premiere communicated with anyone except as authorized by Section 804.

Because there is no competent evidence in the record that Premiere improperly contacted third parties, the Court should grant Premiere's motion for summary judgment as to this count.

F. Premiere never claimed that it "could cause . . . government . . . to act against" Maynard.

In paragraph 16 of the complaint, Maynard alleges that Premiere "stated to multiple third parties and to Plaintiff that it could cause specific government agencies to act against Plaintiff including but not limited to the California State Bar Association taking action against the current status of her license."

Under Section 807(5) of the FDCPA, 15 USC Sec. 1692e(5), making a "threat to take any action that cannot legally be taken or that is not intended to be taken" is a false and deceptive representation and hence, a violation of the FDCPA. In this case, Premiere did not make any such statements as alleged to anyone, including "multiple third parties." Wolfe Aff. at page 5, line 3. Premiere has no idea what Maynard is referring to and denies making any such statement. Maynard's allegation is simply not true. Premiere made no statement or threat regarding Maynard's California State Bar Association membership to anyone. Id. at line 6. Premiere has no idea how Ms. Maynard became aware of such claims, and denies them entirely.

Premiere contacted no one except Plaintiff's employer for purposes of undertaking the administrative wage garnishment authorized by federal and California state law. 20 USC §1095a. Id. at line 8. Because there is no competent evidence in the record that Premiere improperly claimed that it could bring adverse government action against Maynard, the Court should grant Premiere's motion for summary judgment as to this count.

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

G. Premiere never failed to respond to Maynard's requests for information.

In paragraph 17 of the complaint, Maynard says that Premiere "did not respond to Plaintiff's request for accounting information regarding the loan specifically payments credited, balances due, etc."

This allegation is subject to a motion to dismiss for failure to state a claim under FRCP 12(b)(6). There is no violation of law to "not respond to Plaintiff's request for accounting information." Maynard has not cited any law that is violated, even if the claims she makes in paragraph 17 are true. Nor has Maynard disclosed in any initial disclosure the identity of any document purporting to be such a request.

In any case, Premiere is not aware of any request for information submitted to it by Ms. Maynard; Maynard never requested any information and therefore, Premiere never failed to respond to any such request. Wolfe Aff. at page 5, line 13. Even if such a failure to respond states a cause of action, which it does not, there is no evidence in the record that Maynard made any such request or that Premiere failed to respond to it. Id.

Because there is no indication that failing to respond to a request for information violates the law, this claim should be dismissed under FRCP 12(b)(6). To the extent that any law is allegedly violated, there is no competent evidence in the record that Premiere improperly failed to respond to an information request from Maynard, and the Court should grant Premiere's motion for summary judgment as to this count.

H. Premiere never left harassing messages for Maynard.

In paragraph 18 of the complaint, Maynard alleges that "on a regular and excessive basis, frequently several times daily, Defendant caused to be left by pre-recorded means lengthy, harassing and annoying messages on Plaintiff's answering machine."

Under Section 806 of the FDCPA, 15 USC Sec. 1692d, a debt collector may not "engage in any conduct the natural consequence of which is to . . . harass." A debt collector may not "cause a telephone to ring or engag[e] any person in telephone conversation

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

1 repeatedly or continuously with the intent to annoy, abuse, or harass any person.” 15 USC
2 Sec. 1692d(5).

3 According to the account notes, Premiere never called more than once a day. Wolfe
4 Aff. at page 5, line 17. Premiere never engaged in harassing conduct or called Maynard
5 “repeatedly or continuously with the intent to annoy, abuse, or harass.” Id. There is no
6 evidence in the record of any annoying, abusive or harassing contact between Premiere and
7 Maynard.

8 Because there is no competent evidence in the record that Premiere improperly left
9 harassing telephone message for Maynard, the Court should grant Premiere’s motion for
10 summary judgment as to this count.

11 I. Premiere never left harassing messages for Maynard’s employer.

12 In paragraph 19 of the complaint, Maynard alleges that “on several occasions
13 Defendant also caused the same pre-recorded lengthy, harassing and annoying messages to
14 be left on Plaintiff’s employer’s answering machine.”

15 Under Section 806 of the FDCPA, 15 USC Sec. 1692d, a debt collector may not
16 “engage in any conduct the natural consequence of which is to . . . harass.” A debt collector
17 may not “cause a telephone to ring or engag[e] any person in telephone conversation
18 repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called
19 number.” 15 USC Sec. 1692d(5).

20 According to the account notes, Premiere made only one telephone call to plaintiff’s
21 employer. Premiere called the employer only once. Wolfe Aff. at page 6, line 1. There is no
22 evidence of any abusive conduct by Premiere with Maynard’s employer.

23 Premiere properly contacted Ms. Maynard’s employer once on October 24, 2005 in
24 order to ascertain employment information for purposes of serving an administrative wage
25 garnishment authorized by federal and California state law. 20 USC §1095a. During that
26 telephone call, Premiere verified Maynard’s employment with her employer and obtained
27 from him a fax number to which to deliver the administrative wage garnishment materials on

28 DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

1 behalf of the California Student Aid Commission, to which Ms. Maynard remains indebted.
2 Id.

3 Because there is no competent evidence in the record that Premiere improperly left
4 harassing telephone message for Maynard's employer, the Court should grant Premiere's
5 motion for summary judgment as to this count.

6 J. Maynard alleges no damages resulting from any illegal conduct of Premiere.

7 In paragraph 20 of the complaint, Maynard alleges "The unlawful actions of
8 Defendant caused me emotional distress including anxiety, worry, embarrassment, fear, etc."

9 Section 813(1) of the FDCPA, 15 USC Sec. 1692k(1), allows plaintiffs to recover
10 "any actual damages sustained by such person as a result of" violations of the FDCPA. Here,
11 there is no evidence whatsoever of any violations of the act, much less damages sustained by
12 Maynard in the course of one.

13 Because there is no competent evidence in the record that Maynard has suffered any
14 actual damages "as a result of" any violation of the FDCPA, the Court should grant
15 Premiere's motion for summary judgment as to this count.

16 **VI. Proposed Order**

17 A copy of Defendant's proposed Order is attached.

18 DATED this 13th day of March, 2007.

19
20 /s/ Stephen A. Bernheim

21 Stephen A. Bernheim, WSBA # 15225
22 Attorney for Plaintiff
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25 DEFENDANT'S MOTION FOR
26 SUMMARY JUDGMENT